

**FILED**

**NOT FOR PUBLICATION**

**FEB 17 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OTTO BEAR CHILD,

Defendant - Appellant.

No. 05-35135

D.C. Nos. CV-04-00099-SEH  
CR-02-00028-SEH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Otto Bear Child appeals from the district court's order denying his  
28 U.S.C. § 2255 motion challenging the 220-month sentence imposed following a  
jury trial conviction for abusive sexual contact, in violation of 18 U.S.C. § 2241(c)

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

and 1153. We have jurisdiction pursuant to 28 U.S.C. § 2253(a). We review de novo, *United States v. Day*, 285 F.3d 1167, 1169 (9th Cir. 2002), and we affirm.

The issue of whether *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005), are retroactively applicable to cases on collateral review is foreclosed by *United States v. Cruz*, 423 F.3d 1119 (9th Cir. 2005). The district court therefore properly denied the § 2255 motion.

**AFFIRMED**